

COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 261 of 2002

United India Insurance
Company Ltd.

....

Appellant.

Versus

Smt. Kaila Devi
and others.

.....

Respondents.

**Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.**

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (*in short the Act*) against the judgment and Award, dated 02-07-2002, passed in M.A.C. Case No. 127 of 2000, Smt. Kaila Devi & others Vs. P.C. Phulara and another, by the Motor Accident Claims Tribunal/Additional District Judge, F.T.C., Haldwani (Nainital) (*hereinafter referred to as the Tribunal*), whereby the learned Tribunal has awarded a sum of Rs. 3,17,000/- along with interest @ 9% in favour of the claimant-respondent no. 1 to 4 as against the Opposite Party No.2 –appellant. Aggrieved, the Insurance Company has come up in appeal with a prayer to set aside the impugned judgment and award mainly on the ground of quantum of compensation and that the findings of the Tribunal are not based on evidence on record.

It has been contended on behalf of the appellant that the appellant has accrued a right to challenge the quantum of award in the appeal under Section 173 of the Act and the appeal deserves to be allowed on this ground alone. The income of the deceased as held by the Tribunal has also been challenged.

In view of the contentions raised in appeal by the Insurance Company, it is not necessary to go into detailed facts of the case. A motor accident took place on 3.6.1999 at about 4.30 p.m. on Bareilly Road Haldwani at Anwala Chowki due to rash and negligent driving of driver of scooter No. U.P. 02C-1194, in which Ram Nath (the deceased) sustained injuries and he succumbed to his injuries. It is alleged that the deceased used to earned Rs. 3,500/- p.m. from the business of sand, etc. The O.P.No.1 admitted the accident but asserted that the accident was the result of own negligence of the deceased. The vehicle was duly insured with the appellant-insurance company. The driver of the scooter was driving the vehicle at moderate speed and cautiously and he was having valid driving licence. The O.P.No.2-appellant also contested the claim petition and filed its written statement. The learned Tribunal framed necessary issues in the case and after considering the evidence on record, the Tribunal has held that the accident in question had occurred due to rash and negligent driving by the scooterist aforesaid insulting into grievous injuries to the deceased and his consequent death. The learned Tribunal further held that the driver of the offending scooter was holding a valid driving licence and other valid paper as was clear from pape nos. 18-C/3, 18-C/5-7. It has also been held that the scooter in question was duly insured with the appellant-insurance company. The Tribunal further came to the conclusion that the income of the deceased can safely be assessed at Rs. 2000/- per month and after deducting 1/3rd from it, it has been held that the annual loss of dependency comes to Rs. 16,000/-. The deceased was found to be aged 28 years, therefore, he comes in the age group of 25-30 years. Accordingly, applying the multiplier of 17, the total loss of dependency has been determined at Rs. 2,72,000/- for the death of the deceased and has further awarded sum of Rs. 5,000/- towards funeral expenses and Rs. 10,000/- each of the claimants for loss of consortium and towards loss of love and affection, etc. Ultimately, the learned Tribunal has awarded total amount of compensation worth Rs. 3,17,000/- as mentioned above, with certain directions as

ordered in the impugned order, which gave rise to the present appeal.

We have heard learned counsel for the appellant, Sri Prabhat Pandey as well as learned counsel for the claimant-respondents Sri J.C. Belwal and have carefully gone through the entire material on record including the impugned judgment and award.

It has been vehemently argued on behalf of the appellant that the appellant has a right to challenge the award on the ground of quantum of award in the appeal under Section 173 of the Act. It has been submitted that the income of the deceased has not been based on record, and, therefore, the appeal deserves to be allowed. We have perused the entire material before us and have gone through the relevant provisions of law. We find that the learned Tribunal has considered oral and documentary evidence on record and has rightly held that the income of the deceased can be taken as 24000/- per annum. The deceased was undisputedly aged 28 years at the time of his death and he left behind the claimant-respondent nos. 1 to 4 as his dependents. Considering the facts and circumstances of the case, we are of the view that in the present case just compensation has been awarded by the Tribunal.

Now coming to the argument of the learned counsel for the appellant, we are not inclined to accept the contention of the appellant that it is open to the Insurance Company to challenge the quantum of award in the appeal. The appellant was not granted permission under Section 170(b) of the Act to contest the claim petition on all grounds other than those enumerated under Section 149(2) of the Act. We are fortified in our view by the law laid down by the Apex Court in the case of ***“National Insurance Co. Ltd. Chandigarh Vs. Nicolletta Rohtagi and others” [(2002), 7, S.C.C., 456]***, wherein it has been observed by the Apex Court that ***“even if no appeal is preferred under Section 173 of 1988 Act by***

an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle.” Nothing has been shown to us so as to warrant any interference with the findings arrived at by the learned Tribunal in the case, appealed against.

Thus, in any of view of the matter, We do not find any reason to interfere with the conclusions arrived at by the learned Tribunal and the judgment and award under appeal deserves to be upheld.

Accordingly, the appeal fails on merit and is liable to be dismissed.

The appeal is dismissed. The judgment and award, under appeal, is upheld. No order as to costs.

The amount in deposit with this Court be transmitted to the Tribunal concerned. The claimant-respondents shall be at liberty to withdraw the amount, if any.

(B.S. Verma, J.) (P.C. Verma, J.)

24-08-2004
RCP